

COTTONWOOD HEIGHTS

RESOLUTION NO. 2012-66

A RESOLUTION APPROVING ENTRY INTO AN INTERLOCAL AGREEMENT WITH CANYONS SCHOOL DISTRICT FOR PROPERTY CONVEYANCES

WHEREAS, the Interlocal Cooperation Act, UTAH CODE ANN. §11-13-101 *et. seq.* (the "*Interlocal Cooperation Act*"), provides that any two or more public agencies may enter into agreements with one another for joint or cooperative action following the adoption of an appropriate resolution by the governing body of each participating public agency; and

WHEREAS, the Board of Education of the Canyons School District ("*District*") and the city of Cottonwood Heights ("*City*") are public agencies for purposes of the Interlocal Cooperation Act; and

WHEREAS, a new building to house District's Butler Middle School (the "*New Building*") currently is under construction on certain real property ("*District's Property*") owned by District; and

WHEREAS, City owns two parcels of improved real property ("*City's Property*"), comprising approximately .85 acre, that are contiguous to the Southwest corner of District's Property; and

WHEREAS, City and District believe that consolidation of City's Property with District's Property will enhance the utility of District's Property by providing additional space for 6-8 tennis courts (the "*Courts*"); and

WHEREAS, City and District have proposed that, upon conveyance of City's Property to District, City will receive the right to certain public use of the Courts, as well as a \$361,500 credit against City's financial obligation to District under a separate interlocal agreement between City and District dated 4 December 2012 concerning the auditorium in the New Building; and

WHEREAS, consequently, the parties have negotiated an "Interlocal Cooperative Agreement (City's Conveyance of Two Residences)" containing the terms and conditions for City's conveyance of City's Property to District (the "*Agreement*"); and

WHEREAS, City's municipal council (the "*Council*") met in regular session on 4 December 2012 to consider, among other things, approving City's entry into the Agreement; and

WHEREAS, the Council has reviewed the form of the Agreement, a photocopy of which is annexed hereto; and

WHEREAS, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of the citizens of the City to approve City's entry into the Agreement as proposed;

NOW, THEREFORE, BE IT RESOLVED by the city council of the city of Cottonwood Heights that the attached Agreement with District be, and hereby is, approved, and that City's mayor and recorder are authorized and directed to execute and deliver the Agreement on behalf of City following such amendments and modifications to the Agreement as City's mayor, in consultation with City's manager and attorney, may deem necessary or advisable.

This Resolution, assigned no. 2012-66, shall take effect immediately upon passage.

PASSED AND APPROVED this 4th day of December 2012.

COTTONWOOD HEIGHTS CITY COUNCIL



Linda W. Dunlavy
Linda W. Dunlavy, Recorder

By *Kelvyn H. Cullimore, Jr.*
Kelvyn H. Cullimore, Jr., Mayor

VOTING:

Kelvyn H. Cullimore, Jr.	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael L. Shelton	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
J. Scott Bracken	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael J. Peterson	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Tee W. Tyler	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>

DEPOSITED in the office of the City Recorder this 4th day of December 2012.

RECORDED this 5th day of December 2012.

Interlocal Cooperative Agreement

(City's Conveyance of Two Residences)

THIS INTERLOCAL COOPERATIVE AGREEMENT (this "*Agreement*") is made effective 4 December 2012 by the city of **COTTONWOOD HEIGHTS**, a municipal corporation of the state of Utah ("*City*"), and **THE BOARD OF EDUCATION OF THE CANYONS SCHOOL DISTRICT**, a school district of the state of Utah ("*District*"). City and District are each referred to herein as a "*Party*" and are collectively referred to herein as the "*Parties*."

RECITALS:

A. District owns approximately ____ acres of improved real property (the "*District Property*") that heretofore has been used as the Butler Middle School and the Cottonwood Height Elementary School ("*CH Elementary*").

B. A new building to house Butler Middle School (the "*New Building*") currently is under construction on a portion of the District Property that is located between the site of the current building housing Butler Middle School (the "*Old Building*") and CH Elementary. In connection with completion of the New Building, the Old Building and CH Elementary have been or will be razed and the playing fields, parking areas and associated improvements will be reconfigured. The improvements are depicted in the schematic drawing on Exhibit "A-1" annexed hereto.

C. City owns two parcels of improved real property (the "*Sale Parcels*"), comprising approximately .85 acres, that are contiguous to the Southwest corner of the District Property. City purchased the Sale Parcels in 2006 for \$518,000, but their estimated value is \$410,000 pursuant to an MAI appraisal dated 27 January 2012 by The Appraisal Group, Inc. or \$313,000 pursuant to an appraisal dated 27 January 2012 by Bodell Appraisers. The Sale Parcels are particularly described on Exhibits "B-1" and "B-2" annexed hereto.

D. The Parties believe that consolidation of the Sale Parcels with the District Property will enhance the utility of the District Property by, *inter alia*, providing additional space to allow between six and eight tennis courts (the "*Courts*") to be constructed on the District Property following razing and removal of the Old Building and CH Elementary and associated improvements.

E. For the purposes specified in this Agreement, (1) City desires to convey the Sale Parcels to District, and (2) District desires to receive such conveyance.

F. The Interlocal Cooperation Act (UTAH CODE ANN. § 11-13-101, *et seq.*) (the "*Interlocal Cooperation Act*") provides, among other things, that any two or more public agencies may enter into an agreement with one another for joint or cooperative actions to do what each agency is authorized by law to perform.

G. The Parties desire to enter into an "interlocal cooperative agreement" whereunder they would cooperate with one another concerning the matters specified in this Agreement.

H. The Parties are "public agencies" for purposes of the Interlocal Cooperation Act, are empowered to enter into this Agreement, and have determined that it is mutually advantageous to enter into this Agreement.

I. This Agreement shall entirely supersede any and all prior negotiations and agreements, oral and/or written, between the Parties regarding the matters addressed by this Agreement.

A G R E E M E N T:

NOW, THEREFORE, in consideration of the premises and in compliance with and pursuant to the terms hereof and the provisions of the Interlocal Cooperation Act, the Parties hereby agree as follows:

Section 1. **Sale and Purchase.** City agrees to sell to District, and District agrees to purchase from City, the Sale Parcels and the Sale Rights (defined below) on the terms and conditions specified in this Agreement, free and clear of all liens and encumbrances not otherwise specifically accepted by District in this Agreement. The conveyance of the Sale Parcels and the Sale Rights is conditioned on perpetual use of such property for public purposes..

Section 2. **Water Rights.** The water rights represented by two shares of stock (also called "billing units") (the "*Sale Rights*") in the Brown Sanford System of the Salt Lake Public Utilities ("*SLPU*") water system evidenced by SLPU account no. W1301664 historically have been used in connection with the Sale Parcels.

Section 3. **Conveyance.** At Closing (defined below), City shall convey to District:

(a) **Sale Parcels.** The Sale Parcels, "AS IS." Such conveyance shall be by special warranty deed (the "*Deed*") in such form as the Parties reasonably may agree, and shall be effective to transfer legal title to, and right of immediate possession of, the Sale Parcels, free and clear of all liens and encumbrances except items 1-13 on Schedule B of Exhibit "C-1" and items 1-14 on Schedule B of Exhibit "C-2" annexed hereto (the "*Permitted Exceptions*"). The Deed shall contain a restriction that if at any time any of the Sale Parcels is not owned by a governmental entity and used for a public purpose, then City shall have the continuing option to re-purchase such portion of the Sale Parcels, and an equivalent portion of the Sale Rights, for a purchase price equal to the proportionate Cash Value (defined below) paid by District hereunder for such portion of the Sale Parcels, without interest accrual.

(b) **Sale Rights.** The Sale Rights, free and clear of all liens and encumbrances except as provided in subsection 4(c), below.

Section 4. **Purchase Price.** The purchase price (the "*Purchase Price*") for the Sale Parcels shall be as follows:

(a) **Cash Value.** \$361,500 (the "*Cash Value*"); plus

(b) **Tennis Court Use Rights.** The right of public use of the Courts as specified in this subsection 3(d). The Courts shall be constructed by District, at its cost, within one year

following razing and removal of the Old Building and CH Elementary and associated improvements. As part of the Purchase Price:

(i) Priority of Use. The relative priorities of use of the Courts shall be as follows:

(A) District Use. First, Brighton High School ("BHS") tennis team practices and tournaments, Utah High School Activities Association state or qualifying tennis tournaments or qualifying tournaments (whether or not BHS tennis players have been selected for, or have not been eliminated from, such tournaments), BHS PE classes, Butler Middle School PE classes, and other District uses.

(B) City and Cottonwood Heights Rec District Use. Second, tennis team practices and tournaments sponsored by City and/or Cottonwood Heights Parks and Recreation Service Area (the "*Rec District*"), reserved in advance through District's Facilities Uses department.

(C) Reservation Holders. Third, members of the public who have reserved use of a court through District's Facilities Uses department.

(D) Others. Fourth, all other members of the public.

(ii) Fees. If District implements fees for use of the Courts, such fees shall be consistent with UTAH CODE ANN. § 53A-3-414 and District policy, procedures, and regulations.

(iii) Maintenance. District shall maintain the Courts in good, useable condition at its sole cost. City shall pay for any damages beyond normal wear and tear that occur as a result of City's use of the Courts.

Section 5. Payment of Purchase Price. District shall pay the Purchase Price as follows:

(a) Cash Value. District shall pay the \$361,500 Cash Value to City as follows:

(i) To the extent possible, all of the Cash Value will be paid via offset against City's required "Contribution" (the "*Contribution*") to District under the "Interlocal Cooperative Agreement (New Butler Middle School)" of even date herewith (the "*Auditorium Interlocal*") between the Parties concerning the expansion of the new Butler Middle School auditorium (the "*Auditorium*").

(ii) If offset of all of the Cash Value against the Contribution under section 5(a)(i) is not possible due to City obtaining, arranging for or facilitating donations or grants by private benefactors, other governmental entities or funds, or others, which collectively contribute against the Contribution more than currently anticipated, then, conditioned on prior full payment and satisfaction of the Contribution, District shall pay any unpaid balance of the Cash Value to City within six (6) months after City's written request. The purpose of this section 5(a)(ii) is to provide a mechanism for City to receive the net economic benefit of City's conveyance to District of the Sale Parcels and the Sale Rights if, and only if, the full

Contribution under the Auditorium Interlocal previously has been paid by City and/or by other funding sources obtained, arranged for, or facilitated by City.

(b) Tennis Court Use Rights. The right of public use of the Courts as specified in subsection 4(b), above, shall be valid for a minimum of forty (40) years after City's conveyance of the Sale Parcels to District at Closing, and thereafter in consecutive, automatic, ten (10) year renewal periods until such time as District notifies City in writing of its intent to terminate such public use.

Section 6. City's Representations and Warranties. City makes the following representations and warranties as of the date of this Agreement, and covenants that the same will be true as of the Closing:

(a) Title. At the Closing, City shall own fee simple absolute title to the Sale Parcels and the Sale Rights, and will have the lawful right and authority to convey such property to District as provided in this Agreement.

(b) Compliance. Neither this Agreement, nor anything provided to be done hereunder, violates or shall violate any contract, agreement or instrument to which City is a party or which materially affects any of the property to be conveyed hereunder.

(c) No Mechanic's Liens. No work has been performed or is in progress, and no materials have been furnished to any part of the Sale Parcels, which might give rise to mechanic's, materialman's or other liens.

(d) No Occupancy or Possession. There are no adverse parties in occupancy or possession of any part of the Sale Parcels.

(e) No Leases or Sale Agreements. There are no contracts or other obligations outstanding for the lease, sale, exchange, transfer, or encumbrance of any part of the Sale Parcels or the Sale Rights.

(f) No Condemnation. There are no condemnation proceedings or eminent domain proceedings of any kind pending, threatened or (to the best of City's knowledge) contemplated against any portion of the Sale Parcels.

(g) No Litigation. There is no litigation pending, threatened or (to the best of City's knowledge) contemplated involving or affecting the Sale Parcels.

(h) Authority. The execution of this Agreement, and any other documents executed or delivered pursuant to the provisions hereof, has been duly authorized by City. Upon its execution and delivery, this Agreement will constitute City's valid and binding obligation enforceable in accordance with its terms.

Section 7. District's Representations and Warranties. District makes the following representations and warranties as of the date of this Agreement, and covenants that the same will be true as of the Closing:

(a) Authorization. District's execution, delivery and performance of this Agreement is not in conflict with any law or governmental or regulatory rule, regulation or order, or any order, writ, judgment, decree or injunction of any court or arbitrator applicable to District or any of its properties or assets. The execution, delivery and performance by District of this Agreement does not require the authorization, consent or approval of, the giving of notice to, the registration with, or the taking of any other action in respect of, any governmental authority or agency or any other persons.

(b) No Conflicting Agreements. The execution, delivery and/or performance by District of this Agreement will not conflict with or result in a violation or breach of any contract or agreement to which District is a party.

(c) Due Execution and Delivery. Upon its execution and delivery, this Agreement will constitute District's valid and legally binding obligation, enforceable in accordance with its terms.

Section 8. Representations and Warranties Restated. All of the representations and warranties contained in this Agreement shall be deemed restated as of the Closing with the same effect as though such representations and warranties had been made on the date of the Closing.

Section 9. Inspection, Etc. District and its agents shall have the right to enter the Sale Parcels from time to time prior to the Closing in order to inspect and test the Sale Parcels and the improvements thereon. District shall repair any damage to the Sale Parcels resulting from such inspections and testing, and shall indemnify, defend and hold City harmless from and against any and all damages (including attorneys' fees), claims, demands, actions, or other proceedings, actual or threatened, arising from or in any manner related to District's activities with respect to the Sale Parcels prior to the Closing.

Section 10. Environmental Matters. City represents, warrants and certifies to District that, to the best of City's current actual knowledge, but without due diligence, there will be no (and has not been any) disposal, release or threatened release of any hazardous substances or hazardous wastes on, from or under the Sale Parcels prior to, or during, City's ownership of the Sale Parcels. For purposes of this Agreement, the terms "*disposal*," "*release*," "*threatened release*" and "*hazardous wastes*" shall mean and include any hazardous, toxic or dangerous waste, substance or material, or any disposal, discharge or release or threatened release or any defined as such in (or for the purposes of) the Federal Comprehensive Environmental Response, Compensation and Liability Act, or any other state or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree, relating to any hazardous, toxic or dangerous wastes, substances or materials, as now or at any time hereafter in effect. City shall indemnify and hold District harmless for any losses, damages, claims, costs (including attorneys fees), actions or proceedings arising from the inaccuracy of City's representations in this section 10. If hazardous substances or hazardous wastes are discovered on the Sale Parcels prior to Closing, District freely may terminate this Agreement upon written notice to City.

Section 11. Conveyance of Sale Parcels. At the Closing, City shall convey and transfer to District by the Deed fee simple absolute title to the Sale Parcels, good and marketable in fact and of record, free and clear of all liens and encumbrances except the Permitted Exceptions.

Section 12. **Conditions of District's Obligation to Close.** District's obligation to consummate the transactions contemplated by this Agreement is subject to the fulfillment (or the waiver thereof by District in writing) of the following conditions on or before the date of Closing (the "*Closing Date*"):

(a) **Authority.** District shall be reasonably satisfied that District has requisite authority to perform the actions necessary at the Closing.

(b) **Satisfactory Title.** District shall be reasonably satisfied that City will be able at the Closing to convey to District fee simple absolute title to the Sale Parcels as provided herein.

(c) **Compliance with Obligations.** City shall have materially complied with all of City's obligations to be performed hereunder prior to or on the Closing Date.

(d) **Accuracy of Warranties.** All representations and warranties made by City herein shall be essentially true, accurate and correct as of the Closing Date and there shall be no breach of any warranties or covenants made hereunder by City.

(e) **Execution and Delivery of Documents.** As of or at the Closing, City shall have executed and delivered to District any and all documents required or necessary to consummate the transactions contemplated by this Agreement.

(f) **Due Diligence.** District shall be satisfied with the results of its due diligence required or permitted by this Agreement.

Section 13. **Conditions of City's Obligation to Close.** City's obligation to consummate the transactions contemplated by this Agreement is subject to the fulfillment (or the waiver thereof by City in writing) of the following conditions on or before the Closing Date:

(a) **Authority.** City shall be satisfied that District has requisite authority to perform the actions necessary at the Closing.

(b) **Compliance With Obligations.** District shall have materially complied with all of District's obligations to be performed hereunder.

(c) **Accuracy of Warranties.** All representations and warranties made by District herein shall be essentially true, accurate and correct as of the Closing Date and there shall be no breach of any warranties or covenants made hereunder by District.

(d) **Execution and Delivery of Documents.** As of or at the Closing, District shall have executed and delivered to City any and all documents required or necessary to consummate the transactions contemplated by this Agreement.

Section 14. **Closing.** Provided that all of the conditions of this Agreement have been satisfied prior to the date of closing (the "*Closing Date*"), the closing ("*Closing*") of the conveyances contemplated by this Agreement shall occur within five business days after full

execution and delivery of this Agreement, on a date, at a time, and at a place in Salt Lake County, Utah reasonably specified by City. At Closing:

(a) City's Deliveries. City shall execute, acknowledge and deliver to District (i) the Deed conveying the Sale Parcels to District as provided herein, and (ii) any other documents or instruments required to be executed pursuant to the provisions of this Agreement or otherwise reasonably necessary to be executed or delivered for consummation of the transactions contemplated hereby.

(b) District's Deliveries. District shall (i) pay to City the Purchase Price as provided above, and (ii) execute and deliver, or cause to be executed and delivered, to City any documents or instruments required to be executed pursuant to provisions of this Agreement or otherwise reasonably necessary to be executed or delivered for consummation of the transactions contemplated hereby.

(c) Costs. Any real estate transfer taxes shall be paid by the party obligated by law to pay the same. District shall pay the cost of recording the Deed. District shall pay the cost of any title insurance desired by District. Each party shall pay its own attorneys' fees and costs with respect to the preparation and negotiation of this Agreement and any other agreements and documents contemplated hereby.

(d) Prorations. Any real property taxes, assessments and other charges against the Parcel shall be prorated as of the date of Closing, with City responsible only for that portion attributable to the period before the Closing.

Section 15. Possession. As of Closing, City shall deliver to District, and District shall assume from City, (a) possession and enjoyment of the Sale Parcels and the Sale Rights; and (b) equitable and legal title to; risk of loss, destruction, condemnation and/or damage to; and right to income from, such property.

Section 16. Permitted Termination. If this Agreement is terminated by either party pursuant to a right expressly given it hereunder (a "*Permitted Termination*"), neither party shall have any further rights or obligations hereunder, and any payments or deposits theretofore made shall be returned to the party that made such payment or deposit.

Section 17. Conflict Resolution. In the event of a dispute between the Parties regarding this Agreement, the Parties agree (without limiting any and all other legal and equitable remedies) that City's manager or designee and District's chief executive officer or designee shall meet as soon as possible to discuss and attempt to resolve the dispute. If the Parties do not agree, then the dispute shall be resolved as provided in section 22, below.

Section 18. Default. If a party (the "*Non-Defaulting Party*") has satisfied all of its obligations hereunder, the other party (the "*Defaulting Party*") shall be in default under this Agreement if one or more of the following events occurs:

(a) Any of the Defaulting Party's warranties or representations set forth herein are untrue or inaccurate in any material respect; or

(b) The Defaulting Party fails to meet, comply with or perform any covenant, agreement or obligation on its part required, within the time limits and in the manner required in this Agreement, for any reason other than a Permitted Termination.

Upon an event of a default under this Agreement of which the Non-Defaulting Party is notified on or before the Closing Date, the Non-Defaulting Party may at its option either:

(x) Terminate this Agreement by written notice delivered to the Defaulting Party at or prior to the Closing, in which case all payments previously made hereunder by Non-Defaulting Party shall be returned, whereupon both parties shall be relieved of any further right and obligation hereunder; or

(y) Enforce specific performance of this Agreement; or

(z) Pursue any other available remedies, legal and/or equitable, against the Defaulting Party.

Upon an event of a default of which the Non-Defaulting Party is notified after the Closing, the Non-Defaulting Party may pursue all remedies available to it under law or in equity.

Section 19. **Immunity Act.** The Parties are governmental entities under the Governmental Immunity Act of Utah (UTAH CODE ANN. § 63G-7-101, *et seq.*) (the “*Immunity Act*”). Consistent with the terms of the Immunity Act, and as provided herein, it is mutually agreed that each party is responsible and liable for its own wrongful or negligent acts which are committed by it or by its agents, officials, or employees. Nothing in this agreement shall be construed as a waiver by either or both parties of any rights, limits, protections or defenses provided by the Immunity Act, nor shall this Agreement be construed, with respect to third parties, as a waiver of any governmental immunity to which any Party to this Agreement is entitled under the Immunity Act or otherwise. Subject to the Immunity Act, each Party will be responsible for its own actions and will defend any lawsuit brought against it and pay any damages awarded against it.

Section 20. **Additional Interlocal Act Issues.**

(a) **No Separate Entity.** This Agreement does not create a separate legal/interlocal entity.

(b) **Joint Board.** As required by UTAH CODE ANN. §11-13-207, the parties agree that (i) any cooperative undertaking under this Agreement shall be administered by a joint board consisting of City’s manager or designee and District’s business administrator or designee; and (ii) any real or personal property used in the Parties’ cooperative undertaking herein shall be acquired, held, and disposed of as determined by such joint board.

(c) **Financing Joint Cooperative Undertaking and Establishing Budget.** There is no financing of joint or cooperative undertaking and no budget shall be established or maintained.

Section 21. **Notices.** Any notice required or permitted to be given hereunder shall be deemed sufficient if given by a communication in writing and shall be deemed to have been

received (a) upon personal delivery or actual receipt thereof, or (b) within two (2) business days after such notice is deposited in the United States Mail, postage prepaid, and certified and addressed to the parties as set forth below.

City: COTTONWOOD HEIGHTS
Attn. Liane Stillman, City Manager
1265 East Fort Union Blvd., Suite 250
Cottonwood Heights, UT 84047

With a copy to: Wm. Shane Topham
CALLISTER NEBEKER & MCCULLOUGH
10 East South Temple, 9th Floor
Salt Lake City, UT 84133

District: CANYONS SCHOOL DISTRICT
Attn. Keith Bradford, Business Administrator
9150 South 500 West
Sandy, UT 84070

With a copy to: Daniel R. Harper
BURBIDGE & WHITE
15 West South Temple, #950
Salt Lake City, UT 84101

Section 22. **Claims and Disputes.** Claims, disputes and other issues between the Parties arising out of or related to this Agreement shall be decided by litigation in the Third Judicial District Court of Salt Lake County, Utah.

Section 23. **Titles and Captions.** All section or subsection titles or captions herein are for convenience only. Such titles and captions shall not be deemed part of this Agreement and shall in no way define, limit, augment, extend or describe the scope, content or intent of any part or parts hereof.

Section 24. **Pronouns and Plurals.** Whenever the context may require, any pronoun used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plurals and vice versa.

Section 25. **Applicable Law.** The provisions of this Agreement shall be governed by and construed in accordance with the laws of the state of Utah.

Section 26. **Integration.** This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersedes all prior agreements and understandings concerning the subject matter of this Agreement.

Section 27. **Time.** Time is the essence of this Agreement.

Section 28. **Survival.** All agreements, covenants, representations and warranties contained herein shall survive the execution of this Agreement and any closings contemplated by this Agreement.

Section 29. **Waiver.** No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such or any other covenant, agreement, term or condition. Any party may, by notice delivered in the manner provided in this Agreement, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other party. No waiver shall affect or alter the remainder of this Agreement but each and every other covenant, agreement, term and condition hereof shall continue in full force and effect with respect to any other then existing or subsequently occurring breach.

Section 30. **Rights and Remedies.** The rights and remedies of the parties hereto shall not be mutually exclusive, and the exercise of one or more of the provisions of this Agreement shall not preclude the exercise of any other provision(s) hereof.

Section 31. **Severability.** If any condition, covenant or other provision hereof is held to be invalid or void, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or condition herein contained. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

Section 32. **Litigation Expenses.** If any action, suit or proceeding is brought by a party concerning this Agreement, all costs and expenses of the prevailing party incident to such proceeding, including reasonable attorneys' fees, shall be paid by the non-prevailing party.

Section 33. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

Section 34. **Approval by Attorneys.** This Agreement shall be submitted to the authorized attorneys for each of the Parties for approval in accordance with UTAH CODE ANN. §11-13-202.5.

Section 35. **Kartchner Claim.** The parties acknowledge their joint receipt of a letter dated 8 November 2012 from attorney Bradley L. Tilt on behalf of Brent and Vicki Kartchner asserting certain claims against District and City concerning District's re-construction of the Butler Middle School on realty abutting, or including, the Sale Parcels (the "*Project*"). The matters contained in such claim letter, and any reasonably foreseeable related matters, shall constitute Permitted Exceptions, and District shall have no recourse against City concerning the same; provided, however, that City and District shall cooperatively work together to promptly rectify any mistakes or failures to act in connection with any required City review or approval of the Project.

[Signature page follows]

DATED effective the date first-above written.

CITY:

ATTEST:

COTTONWOOD HEIGHTS

Linda W. Dunlavy, City Recorder

Date signed: _____

By: _____

Kelvyn H. Cullimore, Jr., Mayor

Date signed: _____

APPROVED IN ACCORDANCE WITH UTAH CODE ANN. § 11-13-202.5:

By: _____

Wm. Shane Topham, City Attorney

Date Signed: _____

DISTRICT:

ATTEST:

**BOARD OF EDUCATION OF THE
CANYONS SCHOOL DISTRICT**

Keith Bradford, Business Administrator

Date signed: _____

By: _____

Tracy S. Cowdell, President

Date signed: _____

APPROVED IN ACCORDANCE WITH UTAH CODE ANN. § 11-13-202.5:

By: _____

Daniel R. Harper, Attorney for District

Date Signed: _____

Exhibit "A-1" to
Interlocal Cooperative Agreement

(Attach Schematic Drawing of Butler Middle School Playing Fields Improvements)

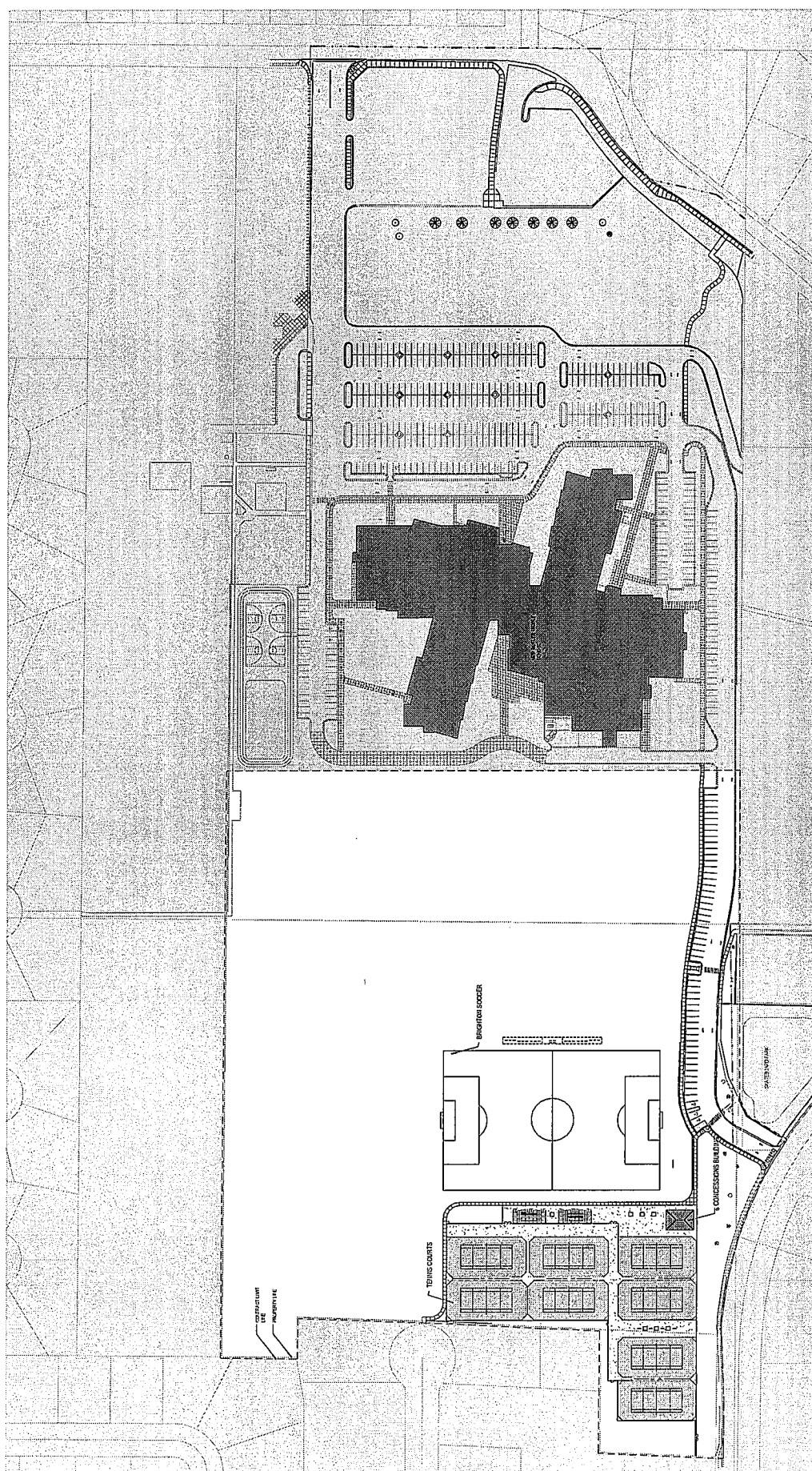


Exhibit "B-1" to Interlocal Cooperative Agreement

The following real property located in Salt Lake County, Utah:

Beginning at a point South 1326.8 feet and South 89°54' East 605.8 feet and North 2°8' East 7 feet from the center of Section 27, Township 2 South, Range 1 East, Salt Lake Base and Meridian (said point erroneously described in some deeds as South 1313 feet and East 605.8 feet from the center of Section 27, Township 2 South, Range 1 East, Salt Lake Base and Meridian); thence North 2°8' East 199.60 feet; thence West 92.00 feet; thence South 2°8' West 199.60 feet; thence East 92.00 feet to beginning.

Parcel No. 22-27-403-005

Exhibit "B-2" to Interlocal Cooperative Agreement

The following real property located in Salt Lake County, Utah:

Beginning 1326.8 feet South and South 89°54' East 697.8 feet and North 2°8' East 298.5 feet from the center of Section 27, Township 2 South, Range 1 East, Salt Lake Base and Meridian; thence North 89°54' West 92 feet; thence South 2°8' West 291.5 feet; thence South 89°54' East 92 feet; thence North 2°8' East 291.5 feet to the beginning.

Less and excepting the following:

Beginning 1326.8 feet South and South 89°54' East 697.8 feet and North 2°8' East 298.5 feet from the center of Section 27, Township 2 South, Range 1 East, Salt Lake Base and Meridian; thence North 89°54' West 92 feet; thence South 2°8' West 92 feet; thence South 89°54' East 92 feet; thence North 2°8' East 92 feet to the point of beginning.

Parcel No. 22-27-403-018

Exhibit "C-1" to
Interlocal Cooperative Agreement

(Attach Schedule B-2 of Title Policy on Sale Parcel #1)

SCHEDULE B

This policy does not insure against loss by reason of the matters shown or referred to in this Schedule.

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of the land or by making inquiry of persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not such matters are shown by the public records.
6. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
7. Any adverse claim based upon the assertion that (a) some portion of the land forms the bed or bank of a navigable river or lake, or lies below the mean high water mark thereof; (b) the boundary of the land has been affected by a change in the course or water level of a navigable river or lake; (c) the land is subject to water rights, claims or title to water and to any law or governmental regulation pertaining to wetlands.

8. The lien of all general real and personal property taxes for the year 2007 and thereafter, not yet due or payable. General real property taxes for the year 2006 have been paid under Tax Parcel No. 22-27-403-005. (Tax District No. AAD)

The amount shown above for taxes does not include a garbage assessment for the year 2006. (Tax Parcel No. 22-27-403-005)

The records of the Salt Lake County Treasurer indicate that the garbage assessment for the year 2006 has been paid.

9. Said property lies within the boundaries of Cottonwood Heights, and is subject to any and all charges and assessments thereof.

(Continued)

Order No. 41962

Attached to and made a part of Policy No. O-9993-4222582

SCHEDULE B (EXCEPTIONS CONTINUED)

10. Said property lies within the boundaries of Cottonwood Improvement District, and is subject to any and all charges and assessments thereof. (All charges and assessments are current at the date hereof.)
11. Said property lies within the boundaries of the "Salt Lake County Special District No. 1" created pursuant to a resolution of the Board of Commissioners of Salt Lake County, dated August 1, 1977 and providing for garbage collection and disposal services within the district. The records of the Salt Lake County Treasurer indicate the annual installment payment for the year 2005 has been paid.
12. Rights of the public and others entitled thereto, to use for street, public utilities, and incidental purposes, that portion of the premises lying within Bengal Boulevard (7600 South Street).
13. Any easements and/or rights-of-way for the water distribution system and appurtenances of the Richards Irrigation Company and/or parties claiming by, through or under it, as the same may be found to intersect the herein described property, as disclosed by mesne instruments of record, including that certain Agreement recorded May 18, 1987 as Entry No. 4458837, in Book 5919, at Page 1262 of the Official Records.

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Exhibit "C-2" to
Interlocal Cooperative Agreement

(Attach Schedule B-2 of Title Policy on Sale Parcel #2)

Order No. 42444

Policy No. O-9993-4222571

SCHEDULE B

This policy does not insure against loss by reason of the matters shown or referred to in this Schedule.

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of the land or by making inquiry of persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not such matters are shown by the public records.
6. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
7. Any adverse claim based upon the assertion that (a) some portion of the land forms the bed or bank of a navigable river or lake, or lies below the mean high water mark thereof; (b) the boundary of the land has been affected by a change in the course or water level of a navigable river or lake; (c) the land is subject to water rights, claims or title to water and to any law or governmental regulation pertaining to wetlands.
8. The lien of all general real and personal property taxes for the year 2007 and thereafter, not yet due or payable. General real property taxes for the year 2006 have been paid under Tax Parcel No. 22-27-403-018. (Tax District No. AAD)

The amount shown above for taxes does not include a garbage assessment for the year 2006. (Tax Parcel No. 22-27-403-018)

The records of the Salt Lake County Treasurer indicate that the garbage assessment for the year 2006 has been paid.
9. Said property lies within the boundaries of Cottonwood Heights, and is subject to any and all charges and assessments thereof.

(Continued)

Order No. 42444

Attached to and made a part of Policy No. O-9993-4222571

SCHEDULE B (EXCEPTIONS CONTINUED)

10. Said property lies within the boundaries of Cottonwood Improvement District, and is subject to any and all charges and assessments thereof.
11. Said property lies within the boundaries of the "Salt Lake County Special District No. 1" created pursuant to a resolution of the Board of Commissioners of Salt Lake County, dated August 1, 1977 and providing for garbage collection and disposal services within the district. The records of the Salt Lake County Treasurer indicate the annual installment payment for the year 2005 has been paid.
12. Rights of the public and others entitled thereto, to use for street, public utilities, and incidental purposes, that portion of the premises lying within Bengal Boulevard (7600 South Street).
13. Any easements and/or rights-of-way for the water distribution system and appurtenances of the Richards Irrigation Company and/or the State of Utah Board of Water Resources, as the same may be found to intersect the herein described property, as disclosed by mesne instruments of record, including that certain Agreement recorded May 28, 1987 as Entry No. 4458837, in Book 5919, at Page 1262 of the Official Records.
14. Matters disclosed by that certain Survey, dated July 26, 1981, prepared by Contract Surveyors, certified by Floyd Lyle, License No. 4614, and filed with the office of the Salt Lake County Surveyor as Survey No. S91-10-0537.

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